



SWIMMING CANADA APPEAL POLICY

Policy Section: Board
Policy Subsection: Human Resources
Policy Title: Appeals

Policy Statement

Swimming Canada is committed to providing opportunities for every individual in the sport of swimming to reach his or her potential in fitness and excellence. In keeping with the spirit of this statement, Swimming Canada is committed to providing a sport and work environment where decisions made and actions taken respect principles and rules of natural justice are made in a proper, fair and informed manner. Any member has the right to appeal decisions that are deemed to be inconsistent with Policy and procedure, biased or that carry an undue adverse impact.

Purpose

Decisions, judgements and actions, and their consequences, are complex and involve athletes, coaches, staff and volunteers throughout the swimming community. It is critical that these decisions, judgements and actions are made in an informed manner and by those with the authority to do so.

Swimming Canada has created a policy and procedure structure to guide the effective decision-making, administration and management of the organization. These guidelines must be followed so as not to create hardship for any member of Swimming Canada.

The Appeals process is described in the Operations: Appeals Procedures and is in place to provide any member of Swimming Canada the opportunity to appeal decisions, judgments and actions undertaken through the conduct of the business of Swimming Canada that may cause undue hardship. Awareness of and accessibility to the Appeal Procedures is an important component of the right to appeal.

Application

This policy applies to all members of Swimming Canada including athletes, coaches, officials, organizers, volunteers, employees, directors and officers. It applies to decisions made by any individual or group of individuals who have been delegated authority to make decisions on behalf of Swimming Canada. Any member who is affected by such a decision may appeal such a decision, provided there are sufficient grounds for the appeal as defined in this policy.

Responsibility

Body	Action
Board of Directors	<ol style="list-style-type: none">1. Ensure training for the CEO in Mediation, Dispute Resolution and Alternate Dispute Resolution2. Develop specific Terms of Reference for Appeals Committee as needed;3. Adhere to the decision/outcome of the appeals process
CEO	<ol style="list-style-type: none">1. Seek Alternative Dispute Resolution processes as warranted by circumstance;



2. Review and research Operations: Appeals Procedures to maintain consistency with legal position and processes on dispute resolution;
3. Ensuring the Appeals Procedure is readily available to Swimming Canada members.

Limitations

This appeals policy does not apply to the following:

- a) relating to the technical (field of play) rules of swimming, which may not be appealed;
- b) in matters relating to AAP, for which Swimming Canada is not responsible;
- c) in matters related to doping offences which are dealt with under the Canadian Policy Against Doping, or FINA or IPC Doping rules;
- d) in matters of employment;
- e) in matters of budgeting, budget implementation and any financial decisions;
- f) in matters of governance, operational structure and staffing;
- g) in matters that do not meet the grounds laid out in this Policy.

The GEO cannot be involved, select an alternative or identify panel members if they have a vested interest in the outcome of the appeal.

References

Swimming Canada By-Laws
Independent Committees
Operations: Appeals Procedure

Review and Approval

Review: January 2017
Approval: September 11, 2006
April 7, 2008
April 21, 2017

Procedure follows:



Swimming Canada Appeal Procedure

1. DEFINITIONS

- a) For purposes of this Procedure:
- i) “AAP” means the Athlete Assistance Program administered by Sport Canada;
 - ii) “Appeal” refers to the appeal conducted under this Procedure;
 - iii) “Appellant” refers to the member appealing a decision;
 - iv) “Board” or “Board of Directors” means the Board of Directors of Swimming Canada;
 - v) “CEO” means, Chief Executive Officer of Swimming Canada or a substitute as appointed from time to time by the Board of Directors of Swimming Canada;
 - vi) “Chairperson” means the Appeal Panel member acting as chair of the Appeal Panel;
 - vii) “Days” means days irrespective of weekends or holidays;
 - viii) “Hearing” means the hearing conducted under this Procedure;
 - ix) “Notice of Appeal” means a notice of appeal duly filed in accordance with this Procedure;
 - x) “Panel” or “Appeal Panel” shall be deemed to be the Appeal Committee as defined in Swimming Canada Bylaw 6.3 as an Independent Committee of the Board;
 - xi) “Party” or “Parties” means the Appellant, the Respondent and any other affected Party participating in the Appeal;
 - xii) “PSO” means provincial sport organizations which are Class I members of Swimming Canada;
 - xiii) “Respondent” refers to the individual or body whose decision is being appealed;
 - xiv) “SDRCC” means the Sport Dispute Resolution Centre of Canada;
 - xv) “Swimming Canada” means the body duly incorporated under the name Swimming/Natation Canada and any members of Swimming Canada as well as all individuals engaged in activities with or employed by Swimming Canada including but not limited to, athletes, coaches, officials, volunteers, directors, officers, team managers, team captains, medical and paramedical personnel, administrators and employees (including contract personnel).

2. SCOPE OF APPEAL

- a) Subject to compliance with Section 4 hereof, this Procedure applies to:
- i) any matter which has been the subject of an investigation or decision pursuant to Swimming Canada’s Complaint and Dispute Resolution Procedure;
 - ii) appeals from final decisions of a PSO tribunal; and
 - iii) any other dispute for which resort to this Procedure is expressly mandated.
- b) This Procedure shall not apply to decisions:
- i) relating to the technical (field of play) rules of swimming, which may not be appealed;
 - ii) in matter relating to AAP for which Swimming Canada is not responsible;



- iii) in matters related to doping offenses which are dealt with under the Canadian Anti-Doping Program, or FINA, IPC doping rules;
 - iv) in matters of employment;
 - v) in matters of budgeting and budget implementation and any financial decisions;
 - vi) in matters that do not meet the grounds laid out in this Policy and Procedures
- c) Unless Swimming Canada agrees to bypass the Club or PSO internal processes and allows the Appeal to be heard in accordance with this Policy and Procedure, appellants must exhaust all internal remedies prior to seeking to resort to this Procedure including policies and procedures at the club and provincial levels.

3. TIMING OF APPEAL

- a) Members who wish to appeal a decision shall have twenty-one (21) Days from the date on which they received notice of a decision to deliver a written Notice of Appeal to the CEO. The Notice of Appeal must be received at the Swimming Canada National Office or personally served upon the CEO within the twenty-one (21) Days specified herein.
- b) Notice of Appeal shall contain the following information:
 - i) Appellant's name and address;
 - ii) date the Appellant was advised of the decision being appealed;
 - iii) name of the individual who communicated the decision to the Appellant;
 - iv) Appellant's status;
 - v) copy of decision being appealed or description of said decision if a written document is not available;
 - vi) the grounds of appeal; and
 - vii) the remedy sought.
- c) Each Notice of Appeal must be accompanied by a \$150.00 deposit, refundable in the case of a successful Appeal or at the discretion of Appeal Panel or the CEO in the circumstance that an appeal is not accepted.
- d) Notices of Appeal may be delivered in person to the CEO, or delivered by electronic means, fax, courier, special delivery, or in person to the Swimming Canada National Office.
- e) Any Party wishing to file a Notice of Appeal beyond the 21 Days must provide a written request stating reasons for an exemption to the requirement.
- f) Within 3 days of receiving the notice of appeal, the CEO will decide whether or not the appeal is based on one or more of the grounds described in this Procedure.
- g) If the appeal is denied on the basis of insufficient grounds, the member will be notified of this decision in writing, giving reasons. This decision is at the sole discretion of the CEO and may not be appealed.

4. GROUNDS FOR APPEAL

- a) A decision cannot be appealed on facts alone. An Appeal may be heard only in respect of the following grounds:



- i) the Respondent made a decision for which it did not have authority or jurisdiction as set out in Swimming Canada's governing documents, rules and policies;
 - ii) the Respondent failed to follow procedures as laid out in the bylaws or approved policies and procedures of Swimming Canada;
 - iii) the Respondent made a decision that was influenced by bias, defined as a lack of neutrality, to such an extent that the decision-maker is unable to consider other views;
 - iv) the Respondent exercised its discretion for an improper purpose;
 - v) the Respondent made a decision for which there is no supporting evidence; or
 - vi) the Respondent made a decision that was grossly unreasonable.
- b) Regardless of the ground of appeal cited, the Appellant must establish that he or she was prejudiced by the decision.

5. SCREENING OF APPEAL

- a) Within ten (10) business days of receiving the Notice of Appeal, the CEO or the CEO's delegate shall determine whether there are appropriate grounds for the appeal, as set out in Article 4;
- b) The facts as alleged by the Appellant(s) in the Notice of Appeal shall be presumed to be correct unless such facts are, to the knowledge of the CEO, clearly erroneous;
- c) If the appeal is denied on the basis of insufficient grounds, the Appellant(s) and the Respondent(s) will be notified in writing with reasons;
- d) If the Appellant(s) believe(s) the CEO has made an error in denying the right to appeal, the matter may be referred to arbitration or mediation administered under the Canadian Sport Dispute Resolution Code, as amended from time to time.

6. APPEAL PANEL

- a) The Appeal Panel shall be established as follows:
 - i) The Appeal Panel shall be comprised of three (3) individuals who shall have no significant relationship with the affected Parties, nor interest, personal or otherwise, in the decision being appealed, and shall be free from any other actual or perceived bias or conflict;
 - ii) The Panel will consist of one person nominated by the Appellant(s), one person nominated by the Respondent(s) and the third person, who shall act as chairperson of the Panel, nominated by the Appellant(s)' and Respondent(s)' nominees to the Panel, or failing agreement by such nominees, appointed by the CEO;
 - iii) should the Appellant not recommend a panel member as set out in ii) above within five (5) days, the CEO shall appoint such member of the Panel; and
 - iv) in the event the Appellant's and Respondent's nominees are unable within five (5) days to agree upon a third member of the panel, the CEO shall nominate the third member;
 - v) each nominee will be required to sign a declaration stating that they are neutral, unbiased and have no significant prior knowledge or have not been otherwise influenced in any way;
 - vi) The CEO of Swimming Canada may reject a proposed nominee.



- b) The Chairperson shall have a law degree or be certified (or have received formal training) as an arbitrator.

7. PRELIMINARY CONFERENCE

- a) The Panel may determine that the circumstances of the dispute warrant a preliminary conference.
- b) The matters which may be considered at a preliminary conference include but are not limited to, date and location of the Hearing, timelines for exchange of documents, format for the Appeal, clarification of issues in dispute, any procedural matter, order and conduct of hearing, remedies being sought, identification of witnesses, and any other matter which may assist in expediting the appeal proceedings.
- c) The Panel may delegate to its Chairperson the authority to be responsible for these preliminary matters.

8. PROCEDURE FOR THE APPEAL HEARING

- a) If the Panel conducts a Hearing, it shall govern the appeal by such procedures as it deems appropriate, provided that:
 - i) the Appeal shall be heard as quickly as reasonably possible, having regard to the nature and circumstances of the case;
 - ii) all three members of the Panel shall hear the Appeal, but a majority in favour of the same result shall be sufficient to effect a decision;
 - iii) each Party shall have the right to be represented by legal counsel or a representative of their choice at the hearing;
 - iv) copies of any written documents which any of the Parties would like the Panel to consider shall be provided to the Panel, and to all Parties, within the time limits established during the preliminary conference or by the Panel;
 - v) if the decision of the Panel may affect another party to the extent that the other party would have recourse to an appeal in their own right, that party will become a Party to the appeal in question and will be bound by its outcome;
 - vi) the Panel may direct that any other person or party participate in the appeal;
 - vii) for the sake of expediency and cost reduction, a hearing either by way of written submissions, via telephone conference or video conference is to be preferred with such safeguards as the Panel considers necessary to protect the interests of the Parties;
 - viii) any Party shall be entitled to address the Panel in either English or French and shall so notify the Panel of the language intended to be used so that appropriate translation services, if necessary, can be arranged;
 - ix) unless otherwise agreed by the parties, there shall be no communication between Panel members and the Parties except in the presence of, or by copy to the other Parties.

9. EVIDENCE THAT MAY BE CONSIDERED

- a) As a general rule, the Panel will only consider evidence that was before the original decision-maker. At its discretion, the Panel may hear new material evidence that was not available at the time of the original decision.



- b) Unless a Party can prove that he/she couldn't possibly have been aware of a certain fact or argument at the time of the submission of his/her Appeal Form or Written Statement, no additional information or argument will be accepted from the Appellant(s) or Respondent(s) by the Panel after the preliminary conference, other than that provided orally by witnesses at the hearing.

10. APPEAL DECISION

- a) Within seven (7) business days of the Hearing, the Panel shall issue its written decision with reasons. In making this decision, the Panel shall have no greater authority than that of the original decision-maker. The Panel may decide:
 - i) To uphold the decision and dismiss the Appeal;
 - ii) To void the decision and refer the matter back to the initial decision-maker for a new decision;
 - iii) To vary the decision where it is found that an error occurred and such an error should not be corrected by the original decision-maker for reasons which include, but are not limited to, lack of clear procedure, lack of time, or lack of neutrality; and
 - iv) To determine how costs of the Appeal shall be allocated excluding the legal costs and legal disbursements, if at all.
- b) A copy of the decision shall be provided to all Parties and the CEO.
- c) Subject to Article 13, the decision of the Appeal Panel shall be final and binding on all parties.
- d) In extraordinary circumstances, the Panel may issue a verbal decision or a summary written decision, with reasons to follow, provided that the written decision with reasons is rendered within seven (7) business days.

11. TIMELINES

- a) If the circumstances of the Appeal, or if circumstances beyond or outside of the Appeal, are such that this Procedure will not allow a timely decision, the Panel may direct that these timelines be abridged. If the circumstances of the Appeal, or if circumstances beyond or outside of the appeal, are such that the Appeal cannot be concluded within the timelines dictated in this Procedure, the Panel may direct that these timelines be extended. The Panel may delegate this authority to abridge or extend the timelines to the Chairperson.

12. DOCUMENTARY APPEAL

- a) Any Party to the Appeal may request that the Panel conduct the Appeal by way of documentary evidence alone. The Panel may seek agreement to proceed in this fashion. If agreement is not forthcoming, the Panel shall decide whether the Appeal shall proceed by way of documentary evidence and submissions alone.

13. ARBITRATION

- a) If any Party believes the Appeal Panel has made an error such as those described in Article 4 a) of this Procedure, that Party may seek resort to independent arbitration through the SRDCC, provided the Party does so within the prescribed timeline as set out by the SRDCC. The matters



that can be considered by arbitration and the terms under which the arbitration can be conducted will be determined by the SRDCC.

14. LOCATION AND JURISDICTION

- a) Appeals shall take place in Ottawa unless held by way of telephone/video conference call or held elsewhere as may be decided by the Panel as a preliminary matter.
- b) This Procedure shall be governed and construed in accordance with the laws of the Province of Ontario, even though the Appeal may take place in any other province.
- c) No action or legal proceeding shall be commenced against Swimming Canada in respect of a dispute, unless Swimming Canada has refused or failed to abide by the provisions for appeal and/or arbitration of the dispute, as set out in this Procedure.

APPROVAL BY CEO:

Review and Approval:

October 6, 2011
April 21, 2017